

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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)  
In Re Pork Antitrust Litigation ) File No. 18-cv-1776  
) (JRT/HB)  
)  
This Document Relates to: )  
)  
All Actions ) St. Paul, Minnesota  
) May 9, 2022  
) 9:08 a.m.  
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)  
Indiana Packers Corporation, ) File No. 22-mc-26  
) (JRT/HB)  
)  
Petitioner, )  
) St. Paul, Minnesota  
vs. ) May 9, 2022  
) 9:08 a.m.  
)  
Direct Purchaser Plaintiffs, )  
)  
)  
Respondent. )  
)  
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BEFORE THE HONORABLE HILDY BOWBEER  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(MOTIONS HEARING)**

Proceedings reported by court reporter; transcript  
produced by computer.

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1                                   P R O C E E D I N G S

2                                   IN OPEN COURT

3                           (VIA ZOOM VIDEOCONFERENCE)

4                   THE COURT: Good morning, everyone. This is the  
5                   United States District Court for the District of Minnesota.  
6                   I am Magistrate Judge Hildy Bowbeer.

7                   And we are gathered this morning by Zoom in two  
8                   matters. One is *In re Pork Antitrust Litigation*,  
9                   18-cv-1776, and in that matter we are gathered on ECF  
10                  Number 1219, the plaintiffs' motion to compel Indiana  
11                  Packers Corporation to produce documents responsive to a  
12                  subpoena duces tecum. We're also gathered on matter  
13                  number 22-mc-26, ECF Number 1, which is Indiana Packers  
14                  Corporation's motion to quash subpoena.

15                  So essentially we are dealing with kind of mirror  
16                  image motions, that second motion, of course, having been  
17                  transferred in, pursuant to Rule 45(f), from the Southern  
18                  District of Indiana.

19                  So let me start by getting appearances from those  
20                  who are going to be arguing on those motions, and then I  
21                  will circle back to get appearances from counsel for other  
22                  parties.

23                  So, first, on behalf of Indiana Packers  
24                  Corporation, it looks like I'm expecting Britt Miller.

25                  MS. MILLER: Good morning, Your Honor. Britt

1 Miller on behalf of IPC.

2 THE COURT: Good morning.

3 And Robert Entwisle?

4 MR. ENTWISLE: Good morning, Your Honor.

5 THE COURT: Jaime Stilson?

6 MS. STILSON: Good morning, Your Honor.

7 THE COURT: And is there anyone else who is on or  
8 who you are expecting -- actually, I see a little box for  
9 Andrew Spadafora, correct?

10 MR. SPADAFORA: Good morning, Your Honor.

11 THE COURT: Good morning.

12 Anyone else who is on screen with me this morning  
13 or just listening in but who wants their appearance noted on  
14 behalf of Indiana Packers Corporation? No.

15 All right. In addition -- well, actually, it  
16 might be easier for me just to go through counsel for the  
17 parties, but as I call your name, let me know if you  
18 anticipate speaking to the motion this morning.

19 First, on behalf of the class plaintiffs, the  
20 direct purchaser plaintiffs, Joseph Bourne?

21 MR. BOURNE: Good morning, Your Honor. And, yes,  
22 I anticipate speaking.

23 THE COURT: All right. Good morning.

24 Anyone else who wants their appearance noted for  
25 the direct purchaser plaintiffs?

1           Turning to the consumer indirect purchaser  
2 plaintiffs, it looks like Ling Shan Wang.

3           MS. WANG: Yes. Good morning, Your Honor.

4           THE COURT: Good morning.

5           And Rio Pierce?

6           MR. PIERCE: Good morning, Your Honor.

7           THE COURT: Anyone else with me this morning on  
8 behalf of the consumer indirect purchaser plaintiffs? No.

9           All right. Moving on to the commercial and  
10 institutional indirect purchaser plaintiffs, Blaine Finley?

11          MR. FINLEY: Good morning, Your Honor.

12          THE COURT: And is there anyone else who wants  
13 their appearance noted for commercial and institutional  
14 indirect purchaser plaintiffs?

15          MR. FINLEY: I believe not, Your Honor.

16          THE COURT: All right. Turning to the direct  
17 action plaintiffs, is there anyone who wants their  
18 appearance noted on behalf of the Commonwealth of Puerto  
19 Rico? No.

20          What about on behalf of the direct action  
21 plaintiffs who are commonly represented with Dollar General?  
22 No.

23          How about the direct action plaintiffs who are  
24 commonly represented with Cheney Brothers? No.

25          The direct action plaintiffs who are commonly

1 represented with Kroger? No.

2 The direct action plaintiffs who are commonly  
3 represented with Action Meat? Also no.

4 And on behalf of the Sysco direct action  
5 plaintiffs, I do know that I was expecting Sarah Jones.

6 MS. JONES: Good morning, Your Honor.

7 THE COURT: Good morning.

8 Anyone else for the Sysco direct action  
9 plaintiffs?

10 What about the direct action plaintiffs who are  
11 commonly represented with Kraft Heinz and Winn-Dixie? No.

12 The direct action plaintiffs who are commonly  
13 represented with Nestle? No.

14 All right. Anyone whose name I haven't called who  
15 wants their appearance noted for any sort of plaintiff  
16 whatsoever? No.

17 All right. Let's turn now to defense counsel. Is  
18 there anyone here on behalf of Agri Stats? No.

19 On behalf of the Clemens Food Group, Max Samels?

20 MR. SAMELS: Yes, Your Honor.

21 THE COURT: Good morning.

22 Anyone else for the Clemens Food Group?

23 How about the Hormel defendants? I see Craig  
24 Coleman.

25 MR. COLEMAN: Good morning, Your Honor.

1 THE COURT: Good morning.

2 Anyone else for Hormel?

3 MR. COLEMAN: No, Your Honor.

4 THE COURT: On behalf of the JBS defendants, I see  
5 Jessica Nelson.

6 MS. NELSON: Good morning, Your Honor.

7 THE COURT: And Richard Vagas?

8 MR. VAGAS: Good morning, Your Honor.

9 THE COURT: Anyone else for the JBS defendants?

10 MR. VAGAS: No, Your Honor.

11 THE COURT: Turning to the Seaboard Foods  
12 defendant, William Thomson?

13 MR. THOMSON: Good morning, Your Honor.

14 THE COURT: Anyone else for Seaboard Foods?

15 MR. THOMSON: I don't believe so.

16 THE COURT: On behalf of Smithfield Foods, Brian  
17 Robison?

18 MR. ROBISON: Good morning, Your Honor.

19 THE COURT: Anyone else for -- oh. Rod Stone?

20 MR. STONE: Good morning, Your Honor.

21 THE COURT: Anyone else who wants their appearance  
22 noted for Smithfield?

23 Turning to Triumph Foods, I don't think I knew of  
24 anyone who was planning to attend, but is there anyone who  
25 wants their appearance noted? No.

1 And then the Tyson defendants, Jarod Taylor?

2 MR. TAYLOR: Good morning, Your Honor.

3 THE COURT: Anyone else for Tyson?

4 MR. TAYLOR: No.

5 THE COURT: Anybody else on behalf of any  
6 defendant or defendant group whose name I haven't called and  
7 wanted their appearance noted?

8 All right. So that's appearances. Let's turn now  
9 to the motions, and we've got sort of mirror image motions  
10 here.

11 We've already agreed that insofar as there was a  
12 jurisdictional argument raised in the motion that was filed  
13 in the *In re Pork Antitrust Litigation* case, the 18-cv-1776  
14 case, that that is now moot in light of the motion that was  
15 transferred in from the Southern District of Indiana.

16 But let me hear -- let me go ahead and hear first  
17 from the plaintiffs since at the end of the day you're the  
18 ones who are looking to enforce these requests, whether it's  
19 in connection with the motion you filed or in response to  
20 the motion to quash.

21 So, Mr. Bourne, I understand you've got the  
22 virtual microphone.

23 MR. BOURNE: Thank you. Good morning, Your Honor.

24 Plaintiffs believe that the information they're  
25 seeking from Indiana Packers is relevant and proportional to

1 the needs of the case.

2 What we're really seeking is communications with  
3 the defendants about competitive conditions in the pork  
4 industry or other communications and documents about  
5 competitive conditions in the pork industry.

6 And so that latter set of documents would  
7 encompass internal e-mails. So if Indiana Packers had a  
8 conversation with Smithfield or Tyson or whoever and  
9 internally e-mailed about it, that would be a document that  
10 we would be seeking and believe we could get only from  
11 Indiana Packers.

12 By competitive conditions in the pork industry, we  
13 are referring to pricing, supply, exports, things that are  
14 sort of the core features of the antitrust conduct that we  
15 allege in this case.

16 THE COURT: Just to be clear, your Request  
17 Number 9 wasn't limited to communications or to documents  
18 reflecting communications with other defendants, right? It  
19 was all documents that related to or spoke to competitive  
20 conditions in the pork industry, right?

21 MR. BOURNE: That's right, Your Honor. We believe  
22 it would encompass those types of internal communications,  
23 but it's not limited to communications. It would also  
24 include, you know, industry reports that we anticipate  
25 Indiana Packers receives and that we know that, you know,

1 third-party industry participants have provided to the  
2 defendants in the case, analysis of market conditions,  
3 things like that, which in our experience in this case often  
4 include information about how the pork industry is operating  
5 and how the defendants are operating in terms of their  
6 capacity, their production plans, pricing, and things like  
7 that.

8 THE COURT: All right. Go ahead.

9 MR. BOURNE: We believe that Indiana Packers very  
10 likely has unique relevant documents.

11 Exhibits 1 through 4 to my declaration in support  
12 of the plaintiffs' original motion filed in this court  
13 appear to reflect Indiana Packers' information about its  
14 supply and capacity plans, including forward-looking,  
15 near-term information, having been shared with the  
16 defendants. In one instance we see Indiana Packers sharing  
17 it with one of the defendants themselves. The other ones,  
18 the origin of that information is less clear.

19 And those are documents that we have received from  
20 the defendants and so Indiana Packers very likely has  
21 documents concerning sort of how its information came to be  
22 shared with the other defendants.

23 Ultimately, you know, we can't prove what exact  
24 documents Indiana Packers has because we simply don't -- we  
25 don't know. We haven't seen their documents. But based on

1 the information that we do have, we believe that it likely  
2 has important information for the case, particularly because  
3 antitrust cases can often turn on a small -- a relatively  
4 small universe of documents at the end of the day.

5 We don't believe it's our burden to identify  
6 specific documents that are missing, as Indiana Packers has  
7 suggested in its briefing. What we really want is -- you  
8 know, Request 9 says what it says, as we discussed earlier  
9 this morning, but in particular we would be particularly  
10 interested in internal e-mails as well as external e-mails  
11 with the defendants under Requests 1 and 2 that may fill  
12 gaps in the defendants' productions. This is a conspiracy  
13 dating back 13 or 14 years, so there are invariably going to  
14 be some gaps from what the defendants still have.

15 The parties met and conferred, and the plaintiffs  
16 proposed certain custodians and search terms and offered to  
17 have an iterative process, hoping to work together to try to  
18 be able to reach some agreement, and Indiana Packers  
19 essentially said, no, we're not going to do any custodial  
20 ESI searching. We're willing to look for documents on a  
21 "go get" search, which would be like board minutes, things  
22 like that; and those just aren't as useful in an antitrust  
23 case as e-mails. So we think that an e-mail search is  
24 appropriate.

25 The plaintiffs proposed the nine custodians that

1 Indiana Packers had originally agreed to when it was a  
2 party. Of course, it's not a party anymore. But Indiana  
3 Packers' position was zero custodians, so there was no more  
4 negotiation to occur there. But we believe that that is  
5 still a reasonable number, either as a starting point or for  
6 the Court to simply compel.

7 One of the other third parties in this case has  
8 produced documents for eight custodians, or has agreed to.  
9 One of the third parties has produced over 114,000  
10 documents. A couple more right now are reviewing hits after  
11 negotiating search terms to bring the number down to a more  
12 reasonable figure, between 100 and 200 thousand documents it  
13 hit on those search terms.

14 So, you know, we're not trying to treat Indiana  
15 Packers like a party, but we believe that, as a third party,  
16 it likely has information that could be important for the  
17 plaintiffs to prove their claims against the defendants or  
18 potentially for the defendants to prove their defenses to  
19 the plaintiffs.

20 THE COURT: Let me ask this. I know that you have  
21 offered to negotiate search terms, but, of course, search  
22 terms are a mechanism of kind of filtering the universe to  
23 get at the documents that are responsive to the request.

24 Their argument is that the requests themselves are  
25 overly broad. So was there any negotiation about the scope

1 of any of those three -- well, I am thinking of the three  
2 requests. There's the structured data, but I will set that  
3 aside for the moment.

4 The three requests that called for documents, was  
5 there any discussion about an attempt to narrow the breadth  
6 of the requests themselves, not how you might go looking for  
7 it, but what the request itself was?

8 MR. BOURNE: Your Honor, I would say no, not  
9 really. We did, of course, agree to eliminate or to not  
10 pursue certain other requests that were in the subpoena, but  
11 the actual scope of these requests, you know, I think it's  
12 fair to say there wasn't really much attempt for negotiation  
13 on either side. The plaintiffs believe that search terms  
14 could sort of reduce the burden in a search for responsive  
15 documents.

16 The one caveat I would have there is, you know, I  
17 believe the request might use the word "all documents." Of  
18 course, when you are talking about an ESI search, it's not  
19 possible to produce all documents and what I believe that  
20 really means in this kind of context is, you know,  
21 responsive documents subject to a reasonable search or  
22 something along those lines.

23 THE COURT: Um-hmm.

24 MR. BOURNE: Because, for example, if we had  
25 agreed on the nine custodians the plaintiffs proposed or

1 some subset of that after negotiation, you know, you would  
2 get responsive documents from those individuals' files, but  
3 you wouldn't necessarily get documents from anyone else's  
4 files.

5 THE COURT: Right. Right. But insofar as those  
6 searches turned up documents in any way, shape, or form on  
7 competitive conditions in the pork industry, those -- that  
8 scope was not something that was subject to negotiation, at  
9 least from plaintiffs' perspective, right?

10 MR. BOURNE: Right. I don't believe that that  
11 scope was ever negotiated or really meaningfully attempted  
12 to be negotiated by either side.

13 THE COURT: Okay. So in dealing with a subpoena,  
14 and I hear you loud and clear that just because somebody was  
15 a party doesn't mean they get -- and then dismissed doesn't  
16 mean they get a pass on subpoenas, but am I not supposed to  
17 be looking at -- in the context of a subpoena, am I not  
18 supposed to be looking at whether the kinds of information  
19 being sought are reasonably likely to be available from the  
20 parties in the case?

21 I mean, isn't there in that sense a heightened  
22 responsibility on my part and I suppose a heightened  
23 responsibility on your part to not go after third parties  
24 for documents that are reasonably likely to be in the hands  
25 of the parties?

1 MR. BOURNE: You know, I think the answer to that  
2 is slightly nuanced because the cases do say that, you know,  
3 the scope of discovery and relevance is the same under  
4 Rule 45 as it is under the other discovery rules.

5 But, yeah, I think as a general principle that is  
6 a fair statement, that if we can get it from a party, then  
7 we should try to get it from a party rather than from a  
8 third party, whether that third party was a former defendant  
9 or not.

10 What we've seen in this case from the third-party  
11 productions that we've gotten is that they often include  
12 important information and information that we believe is  
13 going to help us prove our claims against the defendants,  
14 and we don't see any reason that it would be different for  
15 Indiana Packers here. Every search is a little bit  
16 different, and this is an alleged conspiracy that dates back  
17 quite a fair amount of time.

18 The other thing I think is important is, yes,  
19 Indiana Packers was dismissed from the case, but the  
20 information we have obtained about Indiana Packers in  
21 discovery suggests that its information was being shared  
22 among the defendants and being utilized by the defendants in  
23 a similar way to the remaining defendants' information, and  
24 that makes us believe that Indiana Packers very likely has  
25 unique relevant documents.

1           Again, internal e-mails, I think, are the clearest  
2           example of this, where there's no possible way a party could  
3           have Indiana Packers' internal e-mails, and those e-mails  
4           could very likely be highly probative of our claims against  
5           the defendants.

6           THE COURT: Insofar as those internal documents  
7           commented on or described communications with the other  
8           defendants, you mean?

9           MR. BOURNE: Yes, described communications with  
10          the other defendants or information-sharing mechanisms in  
11          the pork industry related to, you know, competitive  
12          conditions, which means price, supply, capacity, exports,  
13          et cetera.

14          THE COURT: All right. What about the order in  
15          *Turkey* and why does either that -- would you either take  
16          issue with that reasoning in the first instance, which  
17          obviously you're free to do, or do you believe that doesn't  
18          have relevance here?

19          MR. BOURNE: I believe the *Turkey* order is of  
20          limited relevance here.

21          As I read the order, it says -- you know, on its  
22          face it might appear to have some relevance, but what it  
23          really says is the plaintiffs are seeking all documents  
24          about, you know, certain categories of information, and  
25          those are similar to the ones we've sought here.

1 But my understanding of what occurred there is the  
2 court said, okay, you have to go back and work out a process  
3 for seeking more limited information and you need to  
4 negotiate a search methodology, search terms, and custodians  
5 that will allow you to do that in a reasonable manner.

6 And here, through the negotiations that occurred,  
7 we offered and attempted to do that kind of refinement. So  
8 I believe that takes us out of the *Turkey* order's realm of  
9 relevance.

10 THE COURT: Let me see if I had other -- anything  
11 else you wanted to make sure and get on my radar before I  
12 move to Ms. Miller? I am looking to see if I had other  
13 questions for you.

14 So it sounds like at this point -- well, I mean,  
15 you mention that there are gaps in defendants' production,  
16 but you don't tell me what those are or what you think they  
17 are or what they're likely to be.

18 Can you give me any further reason to believe that  
19 there are gaps in the defendants' production that can likely  
20 only be filled by enforcing this subpoena against Indiana  
21 Packers?

22 MR. BOURNE: Your Honor, one of the reasons we  
23 believe there are gaps is simply because of the length of  
24 the relevant discovery period here. And because of Indiana  
25 Packers' important role in the industry as another major

1 pork integrator, we believe that it likely would be in a  
2 position to have documents that have gone missing over time.

3 The plaintiffs have seen some instances of  
4 documents, you know, that appear to have been missing, no  
5 longer exist. There was a deposition of a Seaboard witness  
6 at one point where, you know, communications between a  
7 Seaboard employee and an employee of another defendant had  
8 only been produced by that other defendant and, you know, we  
9 followed up and it appeared that Seaboard no longer -- you  
10 know, didn't have documents that would have -- if they had  
11 existed, it would have produced them, right?

12 And so that isn't a specific example of Indiana  
13 Packers only having it, but it is an example of, you know,  
14 we've seen instances where inter-defendant communications or  
15 inter-competitor communications that should exist on both  
16 sides haven't, and we expect the same would likely be true  
17 of Indiana Packers.

18 And then because Indiana Packers is a significant  
19 pork integrator who subscribed to Agri Stats during the  
20 conspiracy period and had overlapping trade association  
21 involvement and things like that with the defendants and its  
22 information about its forward-looking production plans and  
23 pricing plans was shared with its competitors, we anticipate  
24 that Indiana Packers would likely have a wealth of highly  
25 probative information about that information-sharing with --

1 among its competitors that we haven't been able to obtain so  
2 far.

3 THE COURT: All right. Thank you. Anything else  
4 you wanted me to hear from you before I turn things over to  
5 Ms. Miller?

6 MR. BOURNE: Nothing else at this point, Your  
7 Honor.

8 THE COURT: Thank you, Mr. Bourne. I will have  
9 you mute.

10 And Ms. Miller, you're up.

11 MS. MILLER: Thank you, Your Honor.

12 You have already touched on a number of issues  
13 that we would have raised and so I will try not to repeat  
14 here.

15 As Your Honor is aware, there are four requests  
16 that are at issue. The first two requests, 1 and 2, seek  
17 Indiana Packers' communications with Agri Stats and the  
18 defendants. Plaintiffs can clearly get these from the  
19 parties and they don't need to get them from IPC.

20 Even today Mr. Bourne has only been able to say  
21 there may be gaps, we expect there to be documents, there  
22 likely is, but has been able to point to nothing that would  
23 indicate that IPC has something that plaintiffs can't get or  
24 haven't already gotten from the defendants in this case.

25 To my knowledge -- and plaintiffs have not

1 represented that they have approached the other defendants  
2 about any alleged gaps in their productions that may reveal  
3 some necessary need for IPC to produce documents here.

4 Request Number 4 we'll set aside for a moment,  
5 which is structured data. Plaintiffs have said nothing  
6 about how that will help them establish a conspiracy among  
7 the other defendants, but we'll move on from that.

8 Request Number 9, as Your Honor has pointed out,  
9 seeks all documents relating to competitive conditions in  
10 the market for pork. We are, quite frankly, at a loss as to  
11 how a request seeking all documents about the pork industry  
12 is specific or targeted, as plaintiffs' papers say it is, or  
13 how any documents that would be responsive to that request  
14 would be uniquely in Indiana Packers' possession.

15 Plaintiffs have already said that they've received  
16 some 3.5 million documents from the actual defendants in  
17 this case who, at least according to plaintiffs, control  
18 70 percent of the pork industry. We would imagine that some  
19 measure of those 3.5 million documents have documents  
20 related to competitive conditions surrounding pork.

21 Mr. Bourne specifically referenced third-party  
22 industry reports that have been provided to the defendants.  
23 They clearly have those because they have them in their  
24 possession, if they've been provided to defendants, because  
25 the defendants have produced them.

1           At no point have plaintiffs, during this entire  
2           process, have plaintiffs explained what they actually need  
3           from IPC without pure speculation. Might have, likely to  
4           have, but they have not explained at any point why the nine  
5           custodians they have identified would have the information  
6           that they are supposedly missing, which, again, they have  
7           not described in any meaningful way.

8           THE COURT: What about the argument -- and I'm  
9           sure you probably have found this in your experience  
10          handling document discovery in large cases, that not  
11          everyone's approach to keeping documents is the same and as  
12          the time frame expands, it's less likely that there will be  
13          uniformity in who kept what and that, therefore, it's  
14          reasonable to imagine that, to the extent there were  
15          communications between Indiana Packers and other defendants,  
16          that Indiana Packers could -- that bear on the issues and  
17          the claims against those other defendants -- that Indiana  
18          Packers could have its copies of those things where those  
19          other defendants might not have retained them.

20          MS. MILLER: Your Honor, I can't speak as to the  
21          other defendants' document retention policies. I, quite  
22          frankly, do not know them and I don't know how they stack up  
23          against IPC's, but that strikes me as a needle in a haystack  
24          in the sense of they haven't -- again, they have not  
25          identified, plaintiffs have not identified a single gap or

1 major amount of information that they claim is missing or a  
2 time period that is missing.

3 To be sure, an occasional e-mail may have been  
4 deleted and it doesn't exist, but that doesn't mean that IPC  
5 should be asked to undergo a massive burden, massive  
6 six-figure burden to undertake to search nine custodians'  
7 documents on the hope that there might be an e-mail that IPC  
8 has that somebody else, in the 3.5 million documents,  
9 accidentally deleted and it's somehow not there anymore.

10 Plaintiffs have not identified a single issue that  
11 they seem to be missing information on or reason to believe  
12 that there is a -- there has been a massive deletion or that  
13 one of the other defendant's document retention policies was  
14 not followed or was insufficient to provide them with the  
15 information.

16 To my knowledge, there's been no discussion, and  
17 plaintiffs can certainly correct me if I'm wrong, but  
18 there's been no discussion with the defendants about gaps in  
19 their productions or concerns about their document retention  
20 policies or anything else.

21 This is nothing but rank speculation that we might  
22 have something that might have been deleted at some point  
23 that can't be identified in a 13-year-long period. They  
24 speculate that we would likely have received relevant  
25 information. They can point to nothing that says we have

1 received relevant information.

2 As Your Honor noted, Rule 45 requires more, not  
3 only why it is relevant, but why the parties' productions  
4 are insufficient. They have never at any point explained  
5 why the nine custodians and the 116 search strings are  
6 narrowed to seek responsive information. The only  
7 explanation they have given us is, well, these are the nine  
8 you agreed to when you were a party, so let's use the same  
9 nine when you're a nonparty.

10 They have at no point, during the year-plus-long  
11 saga of this subpoena, explained why Person 1 they think is  
12 going to have documents that they think are missing or  
13 documents that would be uniquely in the possession of IPC.

14 To be sure, all nine of them I am absolutely sure  
15 have information in their files that relate to competitive  
16 conditions in pork. They're in the pork business. But that  
17 can't be enough to require IPC to process two terabytes of  
18 data to try to find some document that may or may not exist  
19 about topics that plaintiffs clearly have gotten and can  
20 continue to get directly from the defendants in this case.

21 There's been no explanation whatsoever as to the  
22 role of these nine or why these nine might have anything  
23 unique to this case. All they have said is these are the  
24 nine.

25 And to your point, Your Honor, *Turkey* does apply.

1 It is not enough, as Your Honor made the point, to say,  
2 after they've served an overly broad and burdensome subpoena  
3 request, to say, well, once you go ahead and process the two  
4 terabytes of data and incur those costs and then you run the  
5 116 search terms and you see some search hits, well, we  
6 might be able to narrow it from there. But then the costs  
7 are already sunk. The *Turkey* order is clearly applicable  
8 and says, no, a document request like that that says "all"  
9 is clearly burdensome, and that was with respect to parties.

10 And to Your Honor's inquiry and as Mr. Bourne  
11 admitted, at no point did they ever try to narrow the scope  
12 of Request Number 9. Their attempt to narrow it was, well,  
13 we'll do that using custodians and search terms.

14 It shouldn't be IPC's obligation to explain why,  
15 nor could it explain how, any of these nine custodians won't  
16 have information unique to IPC when we don't even know what  
17 it is they are seeking from IPC other than a generic  
18 description of communications with the defendants, which  
19 they can already get from the defendants, and general  
20 documents about competitive conditions in the pork  
21 marketplace. That's ridiculously broad.

22 The burden is on them to show why they need these  
23 documents, why they are specific and targeted, and why they  
24 would be unique to IPC such that it would warrant the  
25 imposition of the severe burdens we are talking about here.

1 THE COURT: What about Mr. Bourne's rejoinder,  
2 though, on *Turkey*, that what the judge actually did there  
3 was to -- was what the plaintiffs are proposing here, which  
4 is send the parties back to talk about search methodology?  
5 Is that accurate, as you understand what went on there?

6 MS. MILLER: As I understand it, the court had the  
7 parties go back and talk about the requests and see if the  
8 requests could be narrowed. Certainly, I'm sure, search  
9 terms and custodians are part of that discussion.

10 But the plaintiffs didn't seek to enforce -- here,  
11 the plaintiffs did not seek to enforce a narrowed request.  
12 They didn't talk about this. This is the first time we are  
13 hearing about industry third-party reports.

14 If they want industry publications, that could be  
15 something that we could go look for in centralized files  
16 without having to process two terabytes of data. This is  
17 the first time we have heard about sort of generalized  
18 information about prices or exports. Again, they at no  
19 point ever tried to narrow the request that we are talking  
20 about here.

21 And, again, the burden is higher on a Rule 45  
22 subpoena than it is for a party. They should have to --  
23 they have to show some level of not only relevance, but why  
24 this information can only be found with IPC. It's not  
25 enough that we might have it, we could have it, we likely

1 have it, somebody else in another deposition showed that  
2 they had it. They have said nothing other than you are a  
3 pork producer, ergo you should produce documents. That  
4 can't be enough under the circumstances.

5 THE COURT: So are you saying that the burden on  
6 the plaintiffs or on any party that seeks to enforce a  
7 subpoena under Rule 45 is to show that the only source of  
8 this information is the subpoena recipient, that they've got  
9 to rule out parties as a source of the information before  
10 they can move forward with a subpoena? I'm not sure I have  
11 seen it --

12 MS. MILLER: I don't think they have to rule it  
13 out as a matter of absolute, but they do have to take into  
14 account the burden on third parties; and if the documents  
15 can be as easily gotten from the parties who are in the case  
16 and fully defending their interests in the case and fully  
17 participating in discovery, then there should be -- then  
18 there has to be some indicia that this extra burden is  
19 required of this third party.

20 There's no indicia of that here. We are literally  
21 talking about documents, about communications between the  
22 IPC and the defendants. If the defendants had a  
23 communication with IPC, then it should be in the defendants'  
24 production.

25 A couple of the documents that Mr. Bourne attached

1 to his declaration, in fact, are. They don't say what  
2 Mr. Bourne says they say, but they're in that production.  
3 Your Honor can look at them plainly. So they already have  
4 those documents and haven't been able to identify why, other  
5 than pure speculation, we might have something else.

6 We could go spend \$500,000 to process these and  
7 review these and it turns out we have nothing more than what  
8 the defendants have already done in terms of communications  
9 by and between the defendants and IPC, and then IPC is out  
10 those hundreds of thousands of dollars and plaintiffs are in  
11 no different position than where they were.

12 I'm not saying they have to rule it out across the  
13 board, but there has to be some indicia of something they  
14 can't get from a party before they force a third party to  
15 incur these kind of expenses, and inter-party communications  
16 and general information about the pork industry can't be  
17 specific enough to put that burden on a third party.

18 THE COURT: How would the burden on IPC be changed  
19 if -- and I hear you on reasons why you think that it's  
20 unlikely or that plaintiffs have not made the showing they  
21 need to show that IPC has information about communications  
22 with other defendants that those defendants don't have or  
23 haven't produced.

24 But how would your -- the burden on IPC be changed  
25 if, for example, we were just looking at that request? In

1 other words, if we were just talking about Request Number 1  
2 and the request -- and so therefore you are only looking at  
3 documents that reflect communications with other defendants,  
4 wouldn't that affect your showing of burden, or would it  
5 not?

6 MS. MILLER: I think it might affect it, but it  
7 won't affect the upfront. Again, we are talking about nine  
8 custodians, which, again, plaintiffs have not described why  
9 these nine custodians are the appropriate custodians for  
10 what they are looking for. They have simply said it's the  
11 same nine as when you were a party. But we would still have  
12 to incur that 70 to 100 thousand dollars to process that  
13 data, that two terabytes of data, in order to try to find  
14 those things.

15 Then, yes, if we were only looking for documents  
16 that have a smithfield.com or a jbs.com or, you know, some  
17 subsequent -- a search for just the domain names, that would  
18 be a lesser search and review, so the post search and review  
19 presumably would be less than if we had to look for  
20 competitive conditions. But it doesn't obviate the upfront  
21 costs of having to process all of that data in order to run  
22 those searches for those domain names.

23 THE COURT: How about the argument that plaintiffs  
24 made in their reply brief relating to the *Paisley Park* case,  
25 in other words, that the burden is just one of the

1       considerations when you are looking at whether a subpoena  
2       imposes essentially an undue burden on the other side?  
3       What -- that case identified three factors, of which the  
4       amount involved is only one of the considerations. So how  
5       would you respond to how, if at all, that case would apply  
6       here?

7               MS. MILLER: Sure. The three factors, as I  
8       understood, are the recipient's interest in the outcome of  
9       the case, whether the recipient can more readily bear the  
10      costs than the requesting party, and whether the litigation  
11      is of public importance. I appreciate that all of those are  
12      factors. Those are not exclusive to all of the other  
13      factors under Rule 45.

14             The recipient's interest in the outcome of the  
15      case and whether the recipient can more readily bear the  
16      costs than the requesting party, we are not in this case,  
17      obviously, so whether plaintiffs prevail or do not prevail,  
18      that's, quite frankly, between them and the defendants.

19             And it shouldn't be enough simply that we can bear  
20      the cost. First, the cost has to be justified. It's  
21      certainly the case that if, in fact, plaintiffs had met  
22      their initial burden to show that this stuff is relevant,  
23      that they can only get it from us or have more than just  
24      speculation that they could get it from us, then if it were  
25      otherwise reasonable, then simply saying it costs too much

1 would not defeat their ability to get documents pursuant to  
2 a Rule 45 subpoena. But you don't get there until you've  
3 made those threshold showings.

4 It's not to say that IPC can't spend the money.  
5 It's saying that it shouldn't have to spend the money when,  
6 in fact, plaintiffs haven't met their threshold question of  
7 whether or not they have shown that it is relevant and  
8 proportional and it meets the standards of Rule 45. They  
9 haven't.

10 So you don't even need to reach the question of  
11 whether or not Indiana Packers can bear the cost because  
12 they haven't even gotten past whether or not they should  
13 bear them.

14 THE COURT: Okay. Anything else, Ms. Miller,  
15 before I give Mr. Bourne a brief opportunity to reply?

16 MS. MILLER: No, Your Honor.

17 THE COURT: Oh, actually, I've got one other  
18 question. You set aside the structured data piece and never  
19 returned to it, and I would like to hear about that because  
20 that was something that, as I understand, IPC was willing to  
21 provide and negotiated to provide fairly early on.

22 And I know that there have been other motions and  
23 other arguments in this and other cases about the relevance  
24 of that kind of structured data, even from nonparties. So  
25 why isn't that -- at least that a fair ask here?

1 MS. MILLER: Sure. Your Honor, I will say at  
2 least in plaintiffs' papers, all they have said as to the  
3 relevance of our sales data is that it will help establish a  
4 conspiracy amongst the defendants. We have no idea how our  
5 sales data might show a conspiracy as in between the  
6 defendants, but in an effort to resolve this as a  
7 compromise, we did offer to produce our transactional data,  
8 which is a burden in and of itself. I believe we said we  
9 had 12 out of the 17 fields that plaintiffs requested.

10 And, Your Honor, we'll stand by that offer if this  
11 will resolve the issue. If this is about transactional  
12 data, we will undertake that burden and provide that and  
13 that's why we offered it, because although we don't see the  
14 relevance of it, we understand and we appreciate that in a  
15 number of these cases structured data can be of some use to  
16 the parties.

17 And so we offered that, and we stand by that  
18 despite the fact that plaintiffs have not articulated a  
19 single reason why that data might show the alleged  
20 conspiracy as and amongst the other defendants.

21 THE COURT: All right. Okay. Thank you. Now I  
22 think that's all I have for you, Ms. Miller.

23 MS. MILLER: Thank you, Your Honor.

24 THE COURT: Mr. Bourne, you're up again.

25 MR. BOURNE: Thank you, Your Honor.

1           As to structured data, you know, it isn't really  
2       emphasized in the papers. As we've gone further down this  
3       path, frankly, I think the other documents are more  
4       important.

5           So Ms. Miller's offer, you know, to produce the  
6       structured data if that will resolve this, you know,  
7       wouldn't be -- it was something that the plaintiffs didn't  
8       agree to when it was on the table and it's something that  
9       we -- to the extent this were a voluntary negotiation right  
10      now, it's something we wouldn't agree to right now.

11          We do believe that it's relevant and it provides a  
12      more fulsome picture of the market, and of course that helps  
13      the experts with their econometric models, although, as Your  
14      Honor is aware, we have now moved for class certification  
15      and so it probably would be a little less useful now than it  
16      would have been a few months ago.

17          THE COURT: Why did it take this long to get to  
18      this point on this subpoena? As I understand it, you had  
19      held off on pursuing this with IPC while you were waiting  
20      for the defendants' documents to come in; and yet once the  
21      defendants' documents are in, as I understand it, you still  
22      haven't pulled, you know, at least significant examples of  
23      gaps, you know, here we see that these defendants don't have  
24      anything before this date or they've got this giant hole  
25      when it comes to this particular issue.

1           So you waited for those documents. It's been  
2           months since the subpoena was served. Why did you wait this  
3           long if it wasn't for the purpose of being able to point me  
4           to gaps in the defendants' production?

5           MR. BOURNE: Your Honor, we wanted to evaluate the  
6           defendants' productions and begin taking depositions and see  
7           where things stood.

8           You know, I think it's true that we can't point to  
9           a major gap, like Hormel doesn't have any documents from  
10          2008 to 2012 or, you know, for some reason Smithfield  
11          doesn't have any communications with Indiana Packers. We  
12          haven't been able to identify any gaps like that.

13          But we do believe, based on what we've seen, that  
14          there are likely some gaps -- there are certainly some gaps  
15          and, you know, we anticipate that Indiana Packers could in  
16          some instances help to fill those.

17          The other piece of this is that, as we've  
18          evaluated the evidence, it has become increasingly clear to  
19          the plaintiffs that Indiana Packers, its role in the  
20          industry leaves it in the position -- and this is something  
21          we learned from the evidence that we have from the  
22          defendants -- its role in the industry leaves it in the  
23          position where we believe it likely would have important  
24          communications about competitive conditions in the pork  
25          industry.

1           And, you know, the types of sort of discrete  
2 documents that we talked about earlier and that Ms. Miller  
3 mentioned, like industry reports and things like that, those  
4 are relevant. There's no question they're relevant.

5           But what I think really we can say with  
6 100 percent certainty only Indiana Packers has is its  
7 internal e-mails about competitive conditions in the pork  
8 industry and its internal e-mails concerning communications  
9 with the defendants about what was going on in the industry.

10           And what we believe was going on in the industry  
11 was the defendants were conspiring to reduce supply and  
12 raise the price of pork, and we believe the Indiana Packers'  
13 internal e-mails about those things are of critical  
14 importance.

15           And because what we really ultimately think is the  
16 most important thing here is internal e-mails, that means  
17 that trying to narrow the scope of the requests wouldn't do  
18 a whole lot of good in terms of burden.

19           Because, you know, if we weeded out trade  
20 association meeting minutes, if we weeded out industry  
21 reports from other third parties, even if we weeded out  
22 communications directly with the defendants, we would still  
23 be left in the position where the plaintiffs believe that  
24 it's important to have a custodial search of e-mails  
25 concerning, you know, things like communications with the

1 defendants, right? And so you've got to run the same sorts  
2 of searches to get to that point.

3 You know, you would still be -- even if you want  
4 to know if Indiana Packers is talking about a discussion  
5 with Smithfield, not to pick on Smithfield, but that was  
6 just the name that popped into my head, you would need to do  
7 searches for Smithfield domains and the word "Smithfield"  
8 and the identities of key individuals at Smithfield, and  
9 those are search terms in our proposal that we made to  
10 Indiana Packers.

11 THE COURT: All right. Okay. We're going to take  
12 a break. I am going to think about whether I can rule on  
13 this from the bench or whether I'm going to need to take it  
14 under advisement. So I am going to block audio and video  
15 and shut down the recording for the moment. And then when I  
16 pop back on screen, that will be your cue that you should  
17 pop back on screen as well.

18 MS. MILLER: Thank you, Your Honor.

19 (Recess taken at 9:59 a.m.)

20 \* \* \* \* \*

21 (10:11 a.m.)

22 **IN OPEN COURT**

23 THE COURT: We are back on the record in the  
24 matter of *In re Pork Antitrust Litigation*, 18-cv-1766, and  
25 specifically Docket Number 1219; and *Indiana Packers Corp.*

1        *vs. Direct Purchaser Plaintiffs*, 22-mc-26, and in that  
2        matter we are referring to ECF Number 1.

3                Starting with the second of those, ECF Number 1,  
4        which is Indiana Packers Corporation motion to quash  
5        subpoena in 22-mc-26, I am going to grant the motion in part  
6        and deny it in part.

7                I am denying the motion to quash with regard to  
8        the structured data that had been negotiated between the  
9        parties to be produced by Indiana Packers in response to  
10       Request Number 4, understanding full on, Mr. Bourne, that  
11       that was not a deal the plaintiffs had agreed to and I'm not  
12       denying the motion to quash for that reason, but I find that  
13       that request is appropriate and I believe the structured  
14       data, insofar as it was described in those negotiations, is  
15       likely to be relevant and noncumulative, particularly with  
16       regard to the econometric models of plaintiffs' experts.  
17       And Indiana Packers didn't really try very hard to persuade  
18       me that it wasn't relevant and there wasn't really any  
19       discussion of burden. So I am denying the motion to quash  
20       as to that data.

21               But I am granting the motion to quash in regard to  
22       the other requests that plaintiffs seek to enforce, namely,  
23       Requests Numbers 1, 2, and 9, on the grounds that plaintiffs  
24       haven't shown that the breadth of information sought by  
25       those requests is relevant or, to the extent that there is

1 relevant information within the bounds of those requests,  
2 plaintiffs haven't shown me that there is important  
3 information that cannot be or hasn't already been obtained  
4 from defendants in this litigation to a degree that would  
5 justify imposing the burden of those undertakings on Indiana  
6 Packers.

7 To be clear, my ruling isn't based in any way on  
8 the idea that Indiana Packers' previous dismissal from the  
9 case somehow raises the bar that the plaintiffs need to  
10 clear or gives them some, you know, full or absolute or  
11 qualified immunity from responding to a subpoena. The  
12 burdens and costs of having previously been a defendant  
13 don't put a thumb on the scale in Indiana Packers' favor in  
14 connection with a subsequent subpoena.

15 That said, the dismissal bears on the relevance in  
16 the sense that much of the plaintiffs' arguments, kind of  
17 when you boil them down, seem to be more about the relevance  
18 of the subpoena requests to Indiana Packers' conduct as  
19 opposed to the claims about the conduct of the current  
20 defendants. Not saying that's exclusively true, but many of  
21 the arguments sort of boil down to that.

22 In particular, the plaintiffs just don't explain  
23 the ways in which the breadth of the underlying information  
24 sought here bears on the issues in litigation. They talk  
25 about documents sort of generally relating to competitive

1 conditions or generally relating to communications that may  
2 have occurred between Indiana Packers and the defendants  
3 that bear on the claims against the defendants, but it's  
4 still got to get tied to the issues in dispute with regard  
5 to the claims that are actually in the case. As I said,  
6 that doesn't mean that there may not be relevant information  
7 in there somewhere, but the contested requests are overly  
8 broad.

9 And although plaintiffs have offered to negotiate  
10 search terms, I don't think that's the point here. Rule 34  
11 requires that requests for documents be made with  
12 particularity. And I think search terms is a way of  
13 relieving the burden of searching for that particularized  
14 information, but search terms aren't themselves a  
15 particularized request.

16 And I think as -- although there are some  
17 differences in the setting between here and the setting that  
18 was under consideration in the order in *Turkey*, still, as  
19 the court found in that case, requests for all documents or  
20 all communications relating to competitive conditions, in  
21 this case in the pork industry, I don't consider those to be  
22 sufficiently particularized in this setting.

23 And I distinguish what we're dealing with here  
24 from the situation with parties. But I do think that the  
25 bar is raised where you're talking about a Rule 45 subpoena

1 to a nonparty because of the importance of showing that  
2 there is important information that cannot be or has not  
3 been gathered from the parties in the case.

4 And as Chief Judge Tunheim noted in the *Plowiecki*  
5 case, a party can't issue an unduly burdensome subpoena to  
6 force the other party to meet and confer on a narrower  
7 subpoena. The requests need to meet the requirements of  
8 Rules 26 and 45 and, of course, by implication Rule 34.

9 To the extent that there are relevant documents,  
10 and I think there may be relevant documents within the scope  
11 of the requests, as I said, I don't think plaintiffs have  
12 shown me why party discovery has been insufficient to gather  
13 that information, and I am emphasizing the word  
14 "information" as opposed to documents.

15 Indiana Packers may have different documents, but  
16 the question, when you're talking about proportionality and  
17 about the reasons for imposing burdens, whether on parties  
18 or nonparties, is whether there are gaps in information that  
19 would be important to proving the claims against the  
20 defendants.

21 Again, looking at Judge Tunheim's ruling affirming  
22 Judge Thorson's order in *Plowiecki*, the Court is mindful of  
23 the need to give special weight in evaluating the balance of  
24 competing needs where discovery is sought from nonparties.

25 As we discussed during the arguments, the subpoena

1 has been outstanding for a number of months while plaintiffs  
2 gathered discovery from the other defendants, but there just  
3 isn't anything in plaintiffs' papers that gives me any  
4 particular reason to believe that there are real gaps in the  
5 production that would justify a search by Indiana Packers to  
6 the tune of, you know, \$70,000 just for the processing fees  
7 and more for the searches and review themselves on the off  
8 chance that they've got important information that is  
9 relevant to important issues in the case that would fill in  
10 some hypothetical gaps in what the defendants [sic] have  
11 already gotten.

12 And I want to be clear that I understand that the  
13 parties' two-way chain of communication may have chosen to  
14 keep different things and there may be different groups of  
15 documents in one -- on one side or on the other.

16 But with requests of this breadth and with the  
17 burdens sought to be imposed here, the speculation that  
18 there may be gaps or likely to be gaps, but without any  
19 reason to believe that they are significant in their  
20 importance to the issues of this case, I think just fall  
21 short of the showing the plaintiffs need to make here.

22 So denying the motion to quash with regard to  
23 structured data. Granting the motion to quash with regard  
24 to the other requests.

25 Denying the motion brought by Indiana Packers

1 insofar as it seeks an award of fees since I'm granting the  
2 motion except in the structured data, and I've got no reason  
3 to believe that that represents a failure to take reasonable  
4 steps to impose an undue burden.

5 With regard to the requests that I'm not  
6 enforcing, the requests as to which I am granting the motion  
7 to quash, by definition as a result of my order, Indiana  
8 Packers isn't having to undergo that burden and so I don't  
9 see a basis under Rule 45(d)(1) to award fees or sanctions  
10 against plaintiffs.

11 And even if you look at it as a Rule 37 inquiry, I  
12 can't find that plaintiffs' position here was so unjustified  
13 as to make it appropriate to shift fees in connection with  
14 this motion practice.

15 So I think that covers each of the pieces on  
16 Docket Number 1 in 22-mc-26. I am denying as moot the  
17 motion to compel brought in 18-cv-1776 because of my ruling  
18 on the motion to quash.

19 My remarks on the record will stand as my  
20 statement of reasons on both of these motions. I will do a  
21 minute entry that reflects the bottom-line ruling, but I  
22 don't intend to issue a written order with my statement of  
23 reasons. You can rely on the transcript for that.

24 And I see Mr. Robison on screen. Something that  
25 needs to be raised at this point, sir?

1 MR. ROBISON: Your Honor, I'm sorry. I did not  
2 mean to interrupt. There was a housekeeping matter I just  
3 wanted to flag for the Court that has nothing to do with the  
4 IPC motions. That was the only reason I was going back on  
5 video.

6 THE COURT: All right. Give me just a moment.  
7 Are there any questions about my ruling on the motions that  
8 we were just talking about? Mr. Bourne?

9 MR. BOURNE: No. Thank you, Your Honor.

10 THE COURT: Ms. Miller?

11 MS. MILLER: I have one quick question, Your  
12 Honor, and that is, in light of plaintiffs' class  
13 certification filing for those four years, should IPC be  
14 limiting the production of data for those four years or will  
15 it be required for the entire period?

16 THE COURT: Why don't -- well, Mr. Bourne, if  
17 you've got an immediate response to that, that would be  
18 fine. I don't know that I've got enough in front of me to  
19 kind of talk off the cuff on that. I might leave you to  
20 meet and confer on that question and then come back to me if  
21 you have a parting of the company.

22 But, Mr. Bourne, do you have an immediate response  
23 on that?

24 MR. BOURNE: Your Honor, we would be happy to meet  
25 and confer about it, but in general, you know, the

1 structured data for an econometric model usually needs to  
2 predate the alleged conspiracy to be useful, and the alleged  
3 conspiracy dates back further than the damages period under  
4 the statute of limitations here.

5 THE COURT: And that's my recollection as well  
6 from some earlier motion practice relating to the provision  
7 of structured data.

8 So I guess I would encourage you to meet and  
9 confer and to have that prior ruling in mind in that regard,  
10 but if you can't reach an agreement on that -- well, here's  
11 what I will do. Why don't you file a joint letter by, let's  
12 see, by Friday of this week and let me know whether you've  
13 either resolved that or whether there is something we need  
14 to come back together for me to decide. All right?

15 MS. MILLER: Happy to do so, Your Honor. Thank  
16 you.

17 THE COURT: All right. Thank you. I think that  
18 closes out the discussion with regard to these two motions.

19 So, yes, Mr. Robison.

20 MR. ROBISON: Your Honor, I just wanted to make  
21 sure the Court was aware we had filed a letter last Friday  
22 evening related to the DAP cases.

23 The DAPs have recently filed amended complaints I  
24 think in 20 of the DAP cases. As the Court knows, there are  
25 some open case management issues related to maybe a

1 consolidated complaint, maybe an exemplar complaint, and so  
2 the defendants thought that the need to answer or otherwise  
3 respond to the new DAP complaints was, in effect, stayed or  
4 held in abeyance while the Court decided whether there would  
5 be a consolidation or an exemplar complaint.

6 We reached out to the DAPs last Wednesday, talked  
7 to them again on Friday, and it sounds like most of the DAP  
8 groups were agreeable to that sort of an arrangement,  
9 provided the defendants give a list of affirmative defenses  
10 that were being asserted in each DAP case by, I think,  
11 May 27th. Some of the other DAP groups just didn't have  
12 time to come to a final decision by the time we wanted to  
13 get a letter on file.

14 So I know that most DAP lawyers are not on this  
15 Zoom hearing, so I'm not looking for argument. I just  
16 literally am just wanting to make sure this did not get lost  
17 in the Court's shuffle.

18 THE COURT: Right. No, we noticed that. In fact,  
19 my law clerk and I were talking about it first thing this  
20 morning.

21 Do you believe you will be able to connect with  
22 the remainder of the DAPs and potentially get some agreement  
23 on file shortly that would obviate the need for a -- well,  
24 obviously there would need to be an order one way or the  
25 other, but do you think that there's anything more to be

1       gained through additional conversation to see if everybody  
2       is on board or have you gone as far as you think you can in  
3       relaying the status of your discussions with the other --  
4       with the DAP plaintiffs?

5               MR. ROBISON: We will reach out again today,  
6       hoping to get a final answer from each group. I don't know  
7       what the answer is going to be yet, obviously, from the DAP  
8       groups that did not respond yet.

9               So, yes, our thought was a stipulation submitted  
10      to the Court with a proposed order was the way to go to  
11      resolve something that seemed pretty basic, considering all  
12      the case management issues that are still open.

13              But we'll do that again and if there's some sort  
14      of disagreement, then unfortunately somebody will have to  
15      file another letter with the Court, but hopefully we will  
16      have agreement from everybody and then get a stipulated  
17      order on file.

18              THE COURT: All right. All right. Thank you.

19              Anything else before we close this hearing down  
20      for this morning?

21              All right. Thank you, all. We are adjourned.

22              MS. MILLER: Thank you, Your Honor.

23              MR. BOURNE: Thank you, Your Honor.

24              (Court adjourned at 10:29 a.m.)

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1  
2 I, Lori A. Simpson, certify that the foregoing is a  
3 correct transcript from the record of proceedings in the  
above-entitled matter.

4 Certified by: s/ Lori A. Simpson

5 Lori A. Simpson, RMR-CRR  
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